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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-196349

DATE: August 12, 1981

MATTER OF: Ben R. Shippen, d/b/a Assurance Company -
Reconsideration

DIGEST:

Where Court of Claims, in action for remission of liquidated damages assessed under Contract Work Hours and Safety Standards Act, dismissed Government counterclaim seeking ruling on entitlement to funds withheld for violations of Davis-Bacon Act due to lack of jurisdiction to issue declaratory judgment, issue of applicability of Davis-Bacon Act will not be considered by GAO since applicability of act may still be considered by court in its ruling on liquidated damages under related act.

Counsel for Ben R. Shippen, d/b/a Assurance Company (Assurance), requests that we reconsider our decision of November 9, 1979 (B-196349, 79-2 CPD 349), declining to consider the issue of whether the Davis-Bacon Act, 40 U.S.C. § 276a (1976), was applicable to certain work performed by Assurance.

The basis for our refusal to consider the matter was that the applicability of the act was an issue which the Court of Claims would likely dispose of in its decision in a civil action brought by Assurance to recover liquidated damages assessed by the Department of the Army.

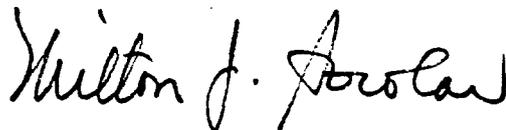
In its decision, Ben R. Shippen d/b/a Assurance Company v. United States, No. 281-79C, dated June 17, 1981, the court dismissed the Government's counterclaim for a judgment in the full amount of the Davis-Bacon Act underpayments (\$45,000). Assurance, in its request

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for reconsideration, argues that since the court dismissed the Government's counterclaim, the court would not dispose of the issue of the applicability of the act. Therefore, Assurance concludes that GAO should now consider the issue.

However, the reason the court did not dispose of the issue was because it lacks jurisdiction to issue declaratory judgments. This does not mean that the court cannot, nor will not, rule on the applicability of the Davis-Bacon Act when it renders its decision concerning the remission of liquidated damages, which were assessed because the overtime paid pursuant to the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327, was insufficient since it was based on a lower basic rate of pay than required by the Davis-Bacon Act.

Accordingly, our Office must again decline to consider the matter and our prior decision is affirmed.



Acting Comptroller General
of the United States